

SUBJECT: Establishing a framework for civil actions involving commercial truckers

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Leach, Krause, Middleton, Schofield, Smith

4 nays — Davis, Dutton, Julie Johnson, Moody

WITNESSES: For — Sarah Sagredo-Hammond, Atlas Electrical Air Conditioning Refrigeration and Plumbing; Pamela Grooms, Atlas Sand Company, LLC; Jonathan Kennemer, CKJ Transport; Adam Blanchard, Double Diamond Transport, Inc.; Johnny Walker, JH Walker Inc.; Robert Bondurant, Martin Transport, Inc; David Bishop, Refrigerated Transport, Inc; Ernesto Gaytan, Super Transport International, Ltd; Todd Wright, TETCO/Mission Petroleum Carriers, Inc.; Lee Parsley, Texans for Lawsuit Reform; Mitchell Smith, Texas Association of Defense Counsel; Glenn Hamer, Texas Association of Business; George Christian, Texas Civil Justice League; Rob Hughes, Texas Forestry Association; Josh McAdams, Texas Propane Gas Association and Midstream Transportation Co; Gary Babbitt, John Esparza, and Dana Moore, Texas Trucking Association; Aaron Rolen; Emily Stroup; (Registered, but did not testify: Jay Thompson, AFACT; Wade Long, AGC-Building Branch; Michael Stewart, Aggregate Transporters Association of Texas; Scott Stewart, American Council of Engineering Companies of Texas; Joe Woods, American Property and Casualty Insurance Association; Peter Salatich, Anheuser-Busch; Will McAdams, Associated Builders and Contractors of Texas; Steven Albright, Associated General Contractors of Texas - Highway, Heavy, Utilities and Industrial Branch; Jason Ryan, CenterPoint Energy; Mike Meroney, Chubb INA Holdings Inc.; Samantha Omev, ExxonMobil; Chris Hosek, Halliburton; Stephen Scurlock, Independent Bankers Association of Texas; CJ Tredway, Independent Electrical Contractors of Texas and Texas Towing and Storage Association; Jill Douglas and Lee Loftis, Independent Insurance Agents of Texas; Ruben Garibay, Laredo Motor Carriers; Mireya Zapata, Lumbermen's Association of Texas; Chris Bioth, Martin Transport, Inc.; Jon Schnautz, National Association of Mutual Insurance Companies; Adam Burklund,

National Waste and Recycling Association and Sentry Insurance; Annie Spilman, NFIB; William Stevens, Panhandle Producers and Royalty Owners Association; Kody Bessent, Plains Cotton Growers, Inc.; Martin Hubert, Sysco Corporation and Texas Poultry Federation; Jim Grace, Texans for Lawsuit Reform; Tommy Engelke, Texas Agricultural Cooperative Council; Jason Modglin, Texas Alliance of Energy Producers; Peyton Schumann, Texas and Southwestern Cattle Raisers Association; David Mintz, Texas Apartment Association; J.D. Hale, Texas Association of Builders; Fred Shannon, Texas Association of Manufacturers; Robert Flores, Texas Association of Mexican-American Chambers of Commerce; Darren Whitehurst, Texas Automobile Dealers Association; Josh Winegarner, Texas Cattle Feeders Association; Chris Noonan, Texas Chemical Council; Mia McCord, Texas Conservative Coalition; Jennifer Fagan, Texas Construction Association; Kenneth Hodges, Texas Corn Producers; Shayne Woodard, Texas Cotton Ginners' Association and Tyson Foods, Inc; Joy Davis, Texas Farm Bureau; Jarrett Hill, Texas Farm Bureau Insurance Companies; Billy Phenix, Texas Food and Fuel Association; Tara Artho, Texas Grain and Feed Association; Ryan Paylor, Texas Independent Producers and Royalty Owners Association; Ryan Skrobarczyk, Texas Nursery and Landscape Association; Tulsı Oberbeck, Texas Oil and Gas Association; Lance Lively, Texas Package Stores Association; Eric Woomer, Texas Precast Concrete Manufacturers Association and Texas Crane Owners Association; Mark Borskey, Texas Recreational Vehicle Association; Tricia Davis, Texas Royalty Council; Keith Strama, Texas Surplus Lines Association; Ron Hinkle, Texas Travel Alliance; Laird Doran, The Friedkin Group, on behalf of US AutoLogistics; Brent Hagenbuch, Titus Transport; Taylor Sims, United Parcel Service; Cary Roberts, US Chamber Institute for Legal Reform; Kate Goodrich, Vulcan Materials; Doug Davis and Tom Spilman, Wholesale Beer Distributors of Texas; Tara Snowden, Zachry Corporation)

Against — Brian Hawthorne, Chambers County Sheriff's Office; Price Johnson, Parks Lease and Vacuum Service; Adrian Shelley, Public Citizen; Steve Bresnen, Craig Eiland, and Jim Perdue, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; and 35 individuals;

(Registered, but did not testify: Luis Figueroa, Every Texan; Cyrus Reed, Lone Star Chapter Sierra Club; Guy Herman, Statutory Probate Judges of Texas; Rene Lara, Texas AFL-CIO; Michael Bristow; Nina McCart; Stan Putman)

On — Jay Crossley, Farm and City

**BACKGROUND:** Civil Practice and Remedies Code sec. 41.001 defines "compensatory damages" as economic and noneconomic damages. Economic damages are intended to compensate a claimant for actual economic or pecuniary loss, and noneconomic damages compensate a claimant for physical pain and suffering, mental or emotional pain or anguish, physical impairment, loss of companionship and society, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

"Exemplary damages" means any damages awarded as a penalty or by way of punishment.

**DIGEST:** CSHB 19 would provide a framework for trial procedures, the use of evidence, and the determination of liability in certain civil actions involving commercial motor vehicles.

The bill would define "civil action" as an action in which:

- a claimant sought recovery of damages for bodily injury or death caused in an accident; and
- a defendant operated a commercial motor vehicle involved in the accident or owned, leased, or otherwise held or exercised legal control over a commercial motor vehicle or an operator of a commercial motor vehicle involved in an accident.

**Bifurcated trial.** In a civil action under the bill, the court would be required to provide for a bifurcated trial on motion by any defendant. The motion would have to be made by the 120th day after the date the defendant bringing the motion filed the defendant's original answer.

In the first phase of the bifurcated trial, the trier of fact would be required to determine liability for compensatory damages, including the amount of such damages. In the second phase, the trier of fact would be required to determine liability for exemplary damages and the corresponding amount.

A finding in the first phase of the trial that an employee defendant was negligent in operating an employer defendant's commercial motor vehicle could serve as a basis for the claimant to proceed in the second part of the trial on a claim against the employer defendant. Such a claim would require a finding of employee negligence in the first phase as a prerequisite to a finding in the second phase that the employer defendant was negligent in relation to the employee defendant's operation of the vehicle.

**Liability for employee negligence.** *Respondeat superior.* If the defendant stipulated to liability for respondeat superior, meaning that, at the time of the accident, the person operating the vehicle was the defendant's employee and acting within the scope of that employment, the employer defendant's liability for compensatory damages would be based only on the stipulated respondeat superior liability.

If the defendant stipulated to such liability and the trial was bifurcated, a claimant could not present evidence in the first phase of the trial on an ordinary negligence claim against the employer defendant that required a finding of employee negligence as a prerequisite to the employer defendant being found negligent in relation to the employee defendant's operation of the vehicle.

*Permissible actions.* A claimant still could pursue an ordinary negligence claim against an employer defendant for negligent maintenance of the vehicle involved in the accident or for another claim that did not require a finding of negligence by an employee as a prerequisite to an employer defendant being found negligent in relation to the employee's conduct or omission. A claimant could present evidence on such claims in the first phase of a bifurcated trial.

A claimant also could pursue a claim for exemplary damages arising from an employer defendant's conduct or omissions in relation to the accident that were the subject of the civil action. Evidence could be presented on such a claim in the second phase of a trial.

**Evidence of violations of regulations and standards.** A regulation or standard would include a statute, regulation, rule, or order regulating equipment or conduct adopted or promulgated by the federal government, a state government, a local government, or a governmental agency or authority.

In the first phase of a bifurcated trial, evidence of a defendant's failure to comply with a regulation or standard would be admissible only if:

- the evidence tended to prove that failure to comply with the regulation or standard was a proximate cause of the bodily injury or death for which damages were sought; and
- the regulation or standard was specific and governed or was an element of a duty of care applicable to the defendant, defendant's employee, or the defendant's property or equipment when those were at issue in the action.

In the second phase of the trial, a claimant still could pursue and present evidence on a claim for exemplary damages related to the defendant's failure to comply with other applicable standards or regulations.

**Visual depictions of accident.** A photograph or video of a vehicle or object involved in an accident would be presumed admissible, even if the photograph or video tended to support or refute an assertion regarding the severity of damages or injury to an object or person involved in the accident. A court could not require expert testimony for admission into evidence of a photograph or video of a vehicle or object involved in an accident.

**Other provisions.** The bills provisions would not apply to a commercial motor vehicle used at the time of the accident primarily for personal,

family, or household purposes.

Passengers who, in a commercial transaction, paid to ride in a commercial motor vehicle and passengers in a motor vehicle transporting children to or from a school or school-sponsored event would be exempt from the provisions of the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021, and would apply only to an action commenced on or after that date.

**SUPPORTERS  
SAY:**

CSHB 19 would clarify and modify existing statute to streamline and create a fair framework for commercial vehicle litigation. The bill would protect commercial vehicle operators from frivolous and unjust lawsuits while ensuring that all victims of collisions still had the ability to have their day in court and be made whole.

It has been shown that over the past decade, motor vehicle accidents have increased substantially while the number of collisions involving a fatality, severe injury, or any other injury increased by significantly smaller amounts or even declined. Despite these trends that seem to warrant a reduction in litigation, excessive and unjust motor vehicle litigation remains a concern for businesses of all sizes, their employees, and drivers across Texas. It is often the case that the person or entity being sued in such cases is not at fault in the collision, yet must spend increasing amounts of money on court costs and on purchasing insurance coverage.

In order to avoid the risk of a large judgment, insurers often settle commercial vehicle cases without regard to merit, possibly encouraging plaintiff attorneys to file more lawsuits. As a result, some insurers are pulling out of Texas, and the companies that remain are increasing deductibles and premiums and reducing coverage for commercial vehicles regardless of claims history. It is necessary to level the playing field in commercial vehicle litigation, and the bill's framework would provide the

balance necessary for awarding fair compensation to Texans injured in accidents, while ensuring that commercial trucking companies and operators can adequately protect themselves from unfair lawsuits.

**Modified framework.** The bifurcated trial provisions would ensure that the evidence introduced in a civil action matched the type of damages to be awarded. The presumption of admissibility for properly authenticated visual depictions of the accident would prevent trial courts from excluding photographs that show the actual damage to a plaintiff's vehicle, which would be useful for the consideration by courts of whether the damage done to the vehicle aligned with the damages the plaintiff was claiming.

The bill's framework simply would clarify and modify the litigation process for civil actions involving commercial motor vehicles. It is necessary that the ability of Texans to access justice for true injuries in commercial vehicle accidents not be compromised, but it is equally important to ensure that an essential industry to the state of Texas is protected in instances where blame is not warranted.

CRITICS  
SAY:

CSHB 19 would remake the civil justice system for the benefit of one particular industry, commercial trucking, to the exclusion of other industries in Texas at a time when more oversight in the industry is needed. Texas has some of the highest rates in the nation of preventable injuries and deaths on highways caused by large commercial trucks. The bill's modified framework for civil actions involving commercial motor vehicles could restrict pursuit of full compensation for Texans injured in accidents and could encourage commercial trucking companies to operate their businesses with more freedom and less regard for the safety of Texans sharing the road. At a time when Texas should be focused on making the state's roads safer, attempts to further protect the commercial trucking industry in civil actions are misguided and could leave injured Texans with less recourse to access justice.